



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 7, 1998

Dr. Michael D. McKinney, M.D.  
Commissioner  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR98-0064

Dear Dr. McKinney:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112398.

The Texas Health and Human Services Commission (the "commission") received a request for

1. Any and all bids, proposals or offers to provide products or services using neural network methodologies to the [commission] or the State received within the past 60 days. This request extends to all documents, letters, memoranda, reports, guidelines, brochures or opinions included with or amending said bids, proposals or offers.
2. Any and all contracts or agreements entered into between the [c]ommission and any vendor who has provided in the past or who will provide the [c]ommission or the State with products or services using neural network methodologies. This request extends to all documents, letters, memoranda, reports, guidelines, brochures or opinions included with or amending said contracts or agreements.

You claim that the information requested in category one is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you advise this office that the commission "has not executed any contracts or agreements for the delivery of products or services that use neural network methodologies." Chapter 552 of the Government Code applies only to information in existence. Open Records Decision Nos. 605 (1992), 572 (1990), 430 (1985). Therefore, the commission need not respond to category two of the request.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 (1991) at 2. Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision 541 (1990) at 4.

You state that the commission is currently evaluating offers from prospective vendors for the development and operation of a Medicaid Fraud and Abuse Detection System, and that release of the requested proposals would seriously compromise the commission's negotiating position. In Open Records Decision No. 170 (1977), this office stated that

[s]o long as negotiations are in progress regarding interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to its proposed contract, we believe that the bidding should be deemed competitive. Release of the bids while the bidding is still competitive would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract being let.

Open Records Decision No. 170 (1977) at 2. It appears that the bidding process is "still competitive" under the standard enunciated above. Therefore, the commission may withhold, at this time, the requested information from required public disclosure under section 552.104. However, once the bidding process is completed and a contract has been awarded, you may not rely on section 552.104 to withhold this information. Open Records Decision No. 541 (1990) at 5.

As we resolve this matter under section 552.104, we do not address the applicability of section 552.110 at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/gle

Ref: ID# 112398

Enclosures: Submitted documents

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(w/o enclosures)